IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Crl.Rev.Pet.No. 3214 of 2007()

CRA.393/05 OF ADDL.DISTRICT & SESSIONS COURT(ADHOC), PATHANAMTHITTA
CC.134/03 OF CJM, PATHANAMTHITTA

REVN. PETITIONER: APPELLANT/ACCUSED

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1. NIZAR, S/O.SHAHUL HAMEED,
KAMPATHAN PURAYIDATHIL VEEDU,
ANAPPARA, KUMBAZHA MURI, PATHANAMTHITTA.

2. NIZAR, S/O.HANEEFA, OSAIKAL PURAYIDOM,
KULASEKHARAPATHY, PATHANAMTHITTA.

3. SHUKOOR, S/O.JAMAL,
ULANTHAMOOPPAN PURAYIDOM, KULASEKHARAPATHY,
PATHANAMTHITTA.

4. SYED MUHAMMED, S/O.MUHAMMEDALI,
MOOLACKAL PURAYIDOM, ANAPPARA,
PATHANAMTHITTA.

5. SUDHEER, S/O.CHINNA MEERAN,
ANAPPARACKAL VEEDU, ANAPPARA, PATHANAMTHITTA.

6. JABBAR, S/O.KHADER ALI,
KEEZHAYATHYU PURAYIDATHIL VEEDU,
KULASEKHARAPATHY, PATHANAMTHITTA.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3214 OF 2007 B

Dated this the 12th day of September, 2007

O R D E R

The revision petitioners were accused Nos. 1 and 3 to 7 in Crime No.510/02 of Pathanamthitta Police Station for offences punishable under sections 143, 147, 148, 452, 324 and 427 read with section 149 IPC.

2. The case of the prosecution can be summarized as follows:-

On 21.8.02 at about 9 p.m. the seven accused persons formed themselves into an unlawful assembly and armed with deadly weapons and in furtherance of their common intention to cause hurt to PWs 1 and 2, who are employees of the 'Hey Day Bar and Restaurant' situated along the Pathanamthitta-Kumbazha public road, criminally trespassed into the same armed with sword stick, iron pipes, etc. A1 inflicted an injury on PW1 with a sword stick. A2 beat PW1 on his left upper arm with a wooden stick and PW2 who was attending customers in the restaurant was assaulted with a wooden stick causing contusion on his back. The accused persons also committed mischief by destroying liquor bottles, soda bottles, fish tank, air conditioner, electric bulbs and

glasses causing a total loss of Rs.1,00,000/-.

3. Since the 2nd accused was absconding the case against him was split up and refilled. Accused Nos.1 and 3 to 7 who are the revision petitioners stood trial before the CJM, Pathanamthitta in C.C.No.134/03.

4. On the side of the prosecution 10 witnesses were examined as PWs 1 to 10 and 6 documents were got marked as Exts.P1 to P6.

5. The accused denied the incriminating circumstances put to them during examination under section 313(1)(b) Cr.P.C. and maintained their innocence. They examined one witness as DW1 and got marked Exs.D1 to D3.

6. The learned CJM after trial, as per judgment dated 17.11.05 found the revision petitioners guilty of the offences charged against them. For the conviction under section 143 read with section 149 IPC they were each sentenced to rigorous imprisonment for three months, for the conviction under section 147 read with section 149 IPC they were each sentenced to rigorous imprisonment for three months and for the conviction under section 148 read with section 149 IPC they were each

sentenced to rigorous imprisonment for six months and for the conviction under section 452 read with section 149 IPC they were each sentenced to rigorous imprisonment for two years and to pay a fine of Rs.5,000/- (Rupees five thousand only) each and on default to pay the fine, to suffer rigorous imprisonment for three months and for the conviction under section 324 read with section 149 IPC, to rigorous imprisonment for one year each and for the conviction under section 427 read with section 149 IPC, to rigorous imprisonment for three months each with a direction that the sentences shall run concurrently. On appeal preferred by the revision petitioners as Crl.Appeal No.393/05 before the Additional Sessions Court (Adhoc-I), Pathanamthitta, the lower appellate court as per judgment dated 25.6.07 confirmed the conviction entered and the sentence passed against the revision petitioners. Hence this revision.

7. After hearing both sides, I am of the view that the conviction recorded against all the revision petitioners for the offence under section 452 IPC is unsustainable. Admittedly, the occurrence took place inside the 'Hey Day Bar' which is a liquor shop and not a residential house. In order to attract section 452

IPC, the criminal trespass must be by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship or as a place for the custody of property within the meaning of section 442 IPC. Hence, the conviction under section 452 IPC recorded against the revision petitioners is set aside and they are acquitted of the same.

8. With regard to the conviction under section 148 IPC also, the courts below appear to have convicted all the revision petitioners under section 148 IPC by calling into aid section 149 IPC. Even if they were members of an unlawful assembly and shared the same with the common object, the conviction of all under section 148 IPC is permissible only if each and every member of the unlawful assembly was armed with deadly weapons. On the evidence before court the 1st accused and the absconding 2nd accused alone were armed with weapons like sword stick and stick and the prosecution witnesses did not mention about the remaining accused being armed with any deadly weapons. If so, the 1st accused alone could have been convicted under section 148 IPC. The rest of the accused could not have been convicted under section 148 IPC by pressing into

aid section 149 IPC vide ***Kabul Singh and others Vs. State of Punjab*** [1995 SCC Crl. 1035] and ***Kattintavida Suresh and others Vs. State of Kerala*** [2005 (3) KLJ 241]. Therefore, the conviction of the rest of the accused other than A1 cannot be sustained and is set aside. The revision petitioners 2 to 6 are accordingly acquitted of the offence punishable under section 148 IPC.

9. Eventhough the learned counsel for the revision petitioners assailed the conviction of the revision petitioners with regard to the other offences, I am of the view that the said conviction has been recorded after an evaluation of the oral and documentary evidence and in the absence of any infirmity in the appreciation of evidence by the courts below, this court, sitting in the rarefied revisional jurisdiction will not dislodge the said conviction. Accordingly, the conviction recorded against the revision petitioners for the rest of the offences is hereby confirmed.

10. What now remains to be considered is the question of adequacy or otherwise of the sentence imposed on the revision petitioners. Having regard to the facts and circumstances of the

case, I am of the view that the sentence of imprisonment awarded to the revision petitioners is on the higher side and that interests of justice will be adequately met by imposing the following sentence. Accordingly, the sentence imposed on the revision petitioners by the courts below is set aside and instead, they are sentenced as follows:-

For their conviction under section 143 IPC, each of the revision petitioners shall pay a fine of Rs.5,000/- (Rupees five thousand only) and on default to pay the fine, each of the defaulting accused shall suffer simple imprisonment for one month. For their conviction under section 147 IPC, each of the revision petitioners is sentenced to pay a fine of Rs.5,000/- (Rupees five thousand only) and on default to pay the fine, the defaulting accused shall suffer simple imprisonment for two months. For his conviction under section 148 IPC, the 1st revision petitioner shall suffer simple imprisonment for one month and shall also pay a fine of Rs.3,000/-(Rupees three thousand only) and on default to pay the fine, to suffer simple imprisonment for one month. For their conviction under section 324 read with section 149 IPC, the revision petitioners shall undergo imprisonment till

the rising of the court and shall pay a sum of Rs.7,500/- (Rupees seven thousand and five hundred only) by way of compensation under section 357(3) Cr.P.C. to PW1. The fine amount as well as the compensation shall be paid within two months from today. Out of the fine amount, a sum of Rs.55,000/- (Rupees fifty five thousand only) shall be paid to the then owner of 'Hey Day Bar' under section 357(1) Cr.P.C. for the loss incurred.

This revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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